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8                              UNITED STATES DISTRICT COURT

9                              SOUTHERN DISTRICT OF CALIFORNIA

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11                                                    )    Civil No. 09-CV-2728-BEN(WVG)
     RQ CONSTRUCTION, INC.,                           )
12                                                    )
                          Plaintiff,                  )    ORDER DENYING DEFENDANTS' REQUEST
13                                                    )    FOR PROTECTIVE ORDER QUASHING OR
     v.                                               )    LIMITING SCOPE OF THIRD PARTY
14                                                    )    SUBPOENAS
     ECOLITE CONCRETE U.S.A., INC., ET AL.,           )    (Doc. No. 25)
15                                                    )
                          Defendants.                 )
16   _____         )

17   **I.**        **INTRODUCTION**

18            Defendants' Request for Protective Order Quashing or Limiting Scope of the Third

19   Party Subpoenas (Doc. No. 25) is DENIED. Defendants request a protective order quashing or

20   limiting the scope of Plaintiff's Subpoena Deuces Tecum to Defendants' insurance broker, Lemas

21   & Associates, and to Defendants' insurance provider, Illinois Union Insurance Company. The

22   Court finds the documents requested non-privileged and relevant to the case at bar.

23   II.       **BACKGROUND**

24            On June 23, 2010, Plaintiff notified Defendants regarding two subpoenas deuces

25   tecum: one directed to their insurance broker, Lemas & Associates, and the other to their

26   insurance carrier, Illinois Union Insurance Company.[1] The subpoenas demand compliance no

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     _____
     [1]Neither subpoena issued from the Southern District of California, but for sake of judicial economy this Court
       addresses the Defendants' objections.

1  later than August 6, 2010.[2]  Neither insurance broker, nor carrier, object to the subpoenas.

2  Defendants have filed the instant dispute over the subpoenas alleging financial privacy

3  protections under the Gramm-Leach-Bliley Act and irrelevance.

4  **III.       DISCUSSION**

5           A subpoena may command a nonparty to produce designated documents, electroni-

6  cally stored information, or tangible things in its possession, custody or control. See Fed.R.Civ.P.

7  45(a)(1)(A)(iii). These items are properly discoverable if they relate to "any nonprivileged matter

8  that is relevant to any party's claim or defense." Fed.R.Civ.P. 26(b). The information sought need

9  not be admissible at the trial if the information sought "appears reasonably calculated to lead to

10  the discovery of admissible evidence." Id.  A relevant matter is "any matter that bears on, or that

11  reasonably could lead to other matters that could bear on, any issue that is or may be in the

12  case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Because discovery is

13  designed to define and clarify the issues, it is not limited to only those specific issues raised in the

14  pleadings.  Id.

15           In addition to the discovery standards under Rule 26 incorporated by Rule 45, Rule 45

16  itself provides that "on timely motion, the court by which a subpoena was issued shall quash or

17  modify the subpoena if it ... subjects a person to undue burden." Rule 45(c)(3)(A)(iv). Of course,

18  "if the sought-after documents are not relevant, nor calculated to lead to the discovery of

19  admissible evidence, then any burden whatsoever imposed would be by definition 'undue.' "

20  Compaq Computer Corp. v. Packard Bell Elec., Inc., 163 F.R.D. 329, 335-36 (N.D.Cal.1995).

21  Underlying the protections of Rule 45 is the recognition that "the word 'non-party' serves as a

22  constant reminder of the reasons for the limitations that characterize 'third-party' discovery."

23  Dart Indus. Co. v. Westwood Chem. Co., 649 F.2d 646, 649 (9th Cir.1980) (citations omitted).

24  Thus, a court determining the propriety of a subpoena balances the relevance of the discovery

25  sought, the requesting party's need, and the potential hardship to the party subject to the

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[2]The parties' Joint Statement notes a new production date other than the July 30, 2010, deadline noticed on
the subpoenas.

1     subpoena.  Heat & Control, Inc. v. Hester Industries, Inc., 785 F.2d 1017, 1024 (Fed. Cir. 1986);

2     Gonzales v. Google, 234 F.R.D. 674, 680 (N.D.Cal.2006); see also Fed. R. Civ. Pro. 45(c)(3)(B)(iii).

3            Defendants assert that the information sought is protected under the Gram-Leach-

4     Bliley Act. This argument is unavailing. The Gramm-Leach-Bliley Act requires financial institutions,

5     including insurance companies, to protect the security and confidentiality of their customers'

6     nonpublic personal information.  See 15 USC § 6801(a), 15 USC § 6809(3)(A). Regardless, a

7     financial institution does not violate the act if it provides the information in response to judicial

8     process, including civil discovery. 15 USC § 6802(e)(8); see Marks v. Global Mortg. Group, Inc.,

9     218 F.R.D. 492, 496 (S.D. W. Va. 2003); see also William Schwarzer et al., Cal. Prac. Guide Fed. Civ.

10    Pro Before Trial Ch. 11(III)-B §1021. Neither the insurance provider, nor broker, subpoenaed in

11    the instant dispute would violate the Gramm-Leach-Bliley Act by providing the responsive

12    documents to Plaintiff.

13           Defendants contend that the subpoenas request irrelevant information. Plaintiff

14    explains that the requests aim to elicit potential evidence that Defendants knew of litigation risks

15    or the decreased value of their company.  This Court finds Plaintiff with the better argument.

16    Defendants complain that the subpoenas request irrelevant information including insurance

17    applications, expired policies, and reservation of rights letters. However, any representation that

18    Defendants provided to their insurance company may provide evidence to support Plaintiff's

19    fraud claim. The Court declines to modify the scope in light of the relevance of the information

20    sought. Also persuasive is the third parties', Lemas & Associates and Illinois Union's, failure to

21    object to the subpoenas. Thus, in balancing the relevance of the discovery sought, the requesting

22    party's need, and the potential hardship to the party subject to the subpoena, the Court

23    concludes that the subpoenas are appropriate and declines to issue a protective order to quash

24    or modify them.

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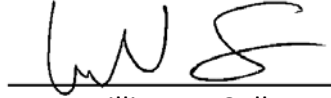27    ///

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1   **IV.**   <u>**CONCLUSION**</u>

2       Defendants' Request for Protective Order Quashing or Limiting Scope of the Third

3   Party Subpoenas (Doc. No. 25) is DENIED. The Court finds the documents requested to be non-

4   privileged and relevant to the case at bar.

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    DATED:  August 4, 2010

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8                                       Hon. William V. Gallo
                                    U.S. Magistrate Judge

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